

**City Council Minutes**  
**Regular Meeting**  
**13 June 2011**

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**PRESENT**

Mayor James D. O'Geary, Presiding; and Council Members, James C. Kearney, Sr., Sara M. Coffey, Michael C. Inscoe, D. Michael Rainey, Brenda G. Peace—Jenkins, Garry Daeke, Lonnie Davis, Jr., and George M. Daye.

**ABSENT**

None

**STAFF PRESENT**

City Manager Ray Griffin, City Attorney John Zollicoffer, City Clerk Esther J. McCrackin, Assistant City Manager Frank Frazier, Finance Director Sandra Wilkerson, Police Chief Keith Sidwell, Planning Development Director Erris Dunston, Engineering Director Peter Sokalski and Human Resources Director Cathy Brown.

**CALL TO ORDER**

The 13 June 2011 Regular Meeting of the Henderson City Council was called to order by Mayor James D. O'Geary at 7:01 p.m. in the R. G. "Chick" Young, Jr. Council Chambers, Municipal Building, 134 Rose Avenue, Henderson, NC.

**ROLL CALL**

The City Clerk called the roll and advised Mayor O'Geary that a quorum was present.

**ADJUSTMENTS TO/APPROVAL OF AGENDA**

Mayor O'Geary asked if there were any adjustments to the Agenda. City Attorney John Zollicoffer, Jr. requested a Closed Session, according to G.S. §143-318.11(a)(5), regarding a real estate matter. Council Member Rainey moved to accept the Agenda with the addition of the Closed Session. Motion seconded by Council Member Daeke and unanimously approved.

**APPROVAL OF MINUTES**

Mayor O'Geary asked for any corrections to and/or approval of the minutes. Council Member Daeke moved the approval of the following minutes: 23 May 2011 Short Regular Meeting; 23 May 2011 Work Session and Budget Work Session #5. The 24 May 2011 Budget Work Session

#6, was approved with the correction on page 3 as noted by Council Member Kearney. Motion seconded by Council Member Kearney and unanimously approved.

## **PUBLIC HEARINGS**

### **A Zoning Ordinance Text Amendment Providing for Conditional Zoning Districts** *(Reference: CAF 11—11; Ordinance 11—27)*

City Manager Griffin asked Planning Director Erris Dunston to address Council. Ms. Dunston advised this was brought before Council at a previous work session and stated the Planning Board recommends this change in the hopes of encouraging economic development and growth. The Amendment would allow a petitioner to do site-specific development. However, if the approved project is not completed in a timely manner, the property reverts back to the previous zoning status.

Mayor O'Geary asked if Council had questions and Council Member Kearney inquired about the application fee. Ms. Dunston stated there is a \$1,000 fee per acre or fraction thereof with a maximum of \$5,000 for the proposed development. City Attorney John Zollicoffer Jr., stated this ordinance requires more staff time (and perhaps attorney time) thus the fee is based on the complexity of the project. Council Member Coffey asked about the timing of development. Attorney Zollicoffer stated development must begin within two years after the final Conditional Zoning permit is issued. Council Member Rainey asked about the application fee and Attorney Zollicoffer stated the fee is non-refundable. Council Member Daeke inquired about notification to surrounding businesses/neighbors. Ms. Dunston stated proper notification will be given.

Mayor O'Geary then opened the floor for anyone wishing to speak in favor of the text amendment. No one came forward. Mayor O'Geary then asked for those wishing to speak against the text amendment. No one came forward. Mayor O'Geary then closed the Public Hearing and asked for the pleasure of Council.

Council Member Rainey moved the approval of Ordinance 11—27, *Zoning Ordinance Text Amendment Providing for Conditional Zoning Districts*. Motion seconded by Council Member Kearney and APPROVED by the following vote: YES: Kearney, Coffey, Inscoc, Rainey, Peace-Jenkins, Daeke, Davis and Daye. NO: None. ABSTAIN: None. ABSENT: None. *(See Ordinance Book 8, p.257.)*

*(Clerk's Note: Public Notice for this Amendment was property posted as required by State law.)*

### **Amending Text to Section 310A-15.41 of the City of Henderson's Zoning Ordinance Designating Zoning Districts for Flea Markets (Outdoor/Indoor Sales or Displays) and Adding Section 671B.** *(Reference: CAF 11-77; Ordinance 11-34)*

City Manager Griffin asked Planning Director Dunston to brief Council on the Planning Board's recommendation. Ms. Dunston advised the Planning Board is reviewing the zoning ordinance and this is the first correction to be brought before Council. This change provides for appearance

standards and regulations such as requiring restroom facilities, dumpsters, parking, etc.

Council Member Coffey asked the difference between a yard sale and a flea market. Ms. Dunston replied a yard sale sells items from the dwelling where the sale is held. Yard sales can be held two consecutive days within a given month at a given location.

With no further questions, Mayor O'Geary opened the floor for anyone wishing to speak in favor of amending Flea Market zoning. No one came forward. Mayor O'Geary then opened the floor for anyone wishing to speak against Flea Market zoning. No one came forward.

Mayor O'Geary then closed the Public Hearing and asked for the pleasure of Council.

Council Member Daeke moved the approval of Ordinance 11—34, *Amending Text to Section 310A-15.41 of the City of Henderson's Zoning Ordinance Designating Zoning Districts for Flea Markets (Outdoor/Indoor Sales or Displays) and Adding Section 671B*. Motion seconded by Council Member Davis and APPROVED by the following vote: YES: Coffey, Inscoc, Rainey, Peace-Jenkins, Daeke, Davis, Daye and Kearney. NO: None. ABSTAIN: None. ABSENT: None. (See Ordinance Book 8, p. 271.)

*(Clerk's Note: Public Notice for this Amendment was property posted as required by State law.)*

## **PUBLIC COMMENT PERIOD ON AGENDA ITEMS**

City Clerk McCrackin advised there was no citizen request to speak before Council.

## **OLD BUSINESS**

**Authorizing the Execution of an Engineering Services Contract with O'Brien & Gere for Engineering Services in Conjunction with a State Revolving Fund Grant/Loan for a Sewer Rehabilitation Project.** (Reference: CAF 11-79-; Resolution 11—52 )

City Manager Griffin asked Engineering Director Peter Sokalski to brief Council. Mr. Sokalski reminded Council that this issue was discussed at the last Work Session. Council's approval is now sought to execute an engineering services contract with O'Brien & Gere for services as required by the State Revolving Fund Grant. Execution of this contract will allow for the development of a design plan which needs to be submitted to the State by December 2011.

There was no discussion and Mayor O'Geary asked for the Council's pleasure.

Council Member Peace-Jenkins moved the approval of Resolution 11—52, *Authorizing the Execution of an Engineering Services Contract with O'Brien & Gere for Engineering Services in Conjunction with a State Revolving Fund Grant/Loan for a Sewer Rehabilitation Project*. Motion seconded by Council Member Rainey and APPROVED by the following Vote: YES: Inscoc, Rainey, Peace-Jenkins, Daeke, Davis, Daye, Kearney and Coffey. NO: None. ABSTAIN: None. ABSENT: None. (See Resolution Book 2, p. 105.)

**A Resolution of the Henderson City Council Ratifying and approving the Mayor's Signature on the Clean Water Management Trust Fund Agreement: DENR No. GA10019, CWMTF Project No. 2008-518, Amendment No. 2.** (Reference: CAF 11-81; Resolution 11-55)

City Manager Griffin stated to align the final grant completion an extension was needed. The Mayor executed this amendment on 20 May 2011 and this resolution ratifies the Mayor's signature.

Mayor O'Geary asked for the pleasure of Council as there were no questions raised.

Council Member Coffey moved the approval of Resolution 11—55, *A Resolution of the Henderson City Council Ratifying and approving the Mayor's Signature on the Clean Water Management Trust Fund Agreement: DENR No. GA10019, CWMTF Project No. 2008-518, Amendment No. 2.* Motion seconded by Council Member Daye and APPROVED by the following vote: YES: Rainey, Peace-Jenkins, Daeke, Davis, Daye, Kearney, Coffey and Inscoe. NO: None. ABSTAIN: None. ABSENT: None. (See Resolution Book 2, p. 111.)

## **NEW BUSINESS**

**Adopting FY12 Budget; Amending Water and Sewer Rates; Adoption of Senior Citizens Discount Program; Police Department Pay Classification and Plan Amendments; Multi-Year Utilities Capital Improvements Plan and Amending the Basic Health Insurance Plan for Employees and Qualified Retirees** Reference: (CAF 11-A-76; Ordinance 11-36; Ordinance 11-37; Resolution 11-57; Resolution 11-56; Resolution 11-59 and Resolution 11-61)

City Manager Griffin stated the two ordinances and four resolutions are a result of decisions made by Council during the budget process and that they could all be considered in one motion.

Council Member Coffey stated during a meeting with City Manager Griffin and Finance Director Wilkerson earlier in the day, an error was found on page 1 of 16 of Ordinance 11-16. City Manager Griffin confirmed there was a transposition of numbers under Ordinance 11-36. The transposition incorrectly showed the Aycock Aquatics Center receiving \$202,770 and the NYPUM/Youth Services receiving \$625,630. The corrected budget shows NYPUM/Youth Services receiving \$202,770 and Aycock Aquatics Center receiving 625,630. Mr. Griffin thanked Ms. Coffey for spotting this error.

Council Member Coffey than stated she was not in agreement with the budget regarding the Code Compliance Inspector position being changed to part-time. She stated citizens are not satisfied with this decision and during her discussion with the City Manager earlier they looked at ways to retain the position as a full-time position. Ms. Coffey suggested a \$0.35 increase in the sanitation fee. Council Member Davis agreed that the position needs to be retained as a full time position.

City Manager Griffin agreed that no one wanted to reduce the Inspector position to part-time and suggested two ways to retain the current full-time position. Dollars could be taken from the General Fund which has already been significantly reduced or there could be a \$.35 increase in the sanitation fee which would provide for the full-time position.

Council Member Inscoe made a motion to direct the City Manager to find the \$19,000 necessary to keep the Code Compliance Inspector position full-time and that all other ordinance and resolutions be approved as written.

City Attorney Zollicoffer, Jr. asked if the budget change needed to be brought before Council before 1 July 2011. City Manager Griffin suggested the Fund Balance increase by \$19,000 in order to make the position full-time. This action would preclude the ordinance coming back to Council. Everyone agreed.

Mayor O'Geary asked for a motion regarding the directive to the City Manager to increase the Fund Balance by \$19,000 to make the Code Compliance Inspector position full-time and approval of Ordinance 11-37, *Amending Water and Sewer Rates*; Resolution 11-57, *Adoption of Senior Citizens Discount Program*; Resolution 11-56, *Police Department Pay Classification and Plan Amendments*; Resolution 11-59, *Multi-Year Utilities Capital Improvements Plan* and Resolution 11-61 *Amending the Basic Health Insurance Plan for Employees and Qualified Retirees* stand as written.

Council Member Inscoe moved the approval of FY 12 Budget with the directive to the City Manager to increase the Fund Balance by \$19,000 to make the Code Compliance Inspector position full-time; Ordinance 11-37, *Amending Water and Sewer Rates*; Resolution 11-57, *Adoption of Senior Citizens Discount Program*; Resolution 11-56, *Police Department Pay Classification and Plan Amendments*; Resolution 11-59, *Multi-Year Utilities Capital Improvements Plan* and Resolution 11-61 *Amending the Basic Health Insurance Plan for Employees and Qualified Retirees*. Motion seconded by Council Member Rainey. The motion was APPROVED by the following vote: YES: Peace-Jenkins, Daeke, Davis, Daye, Inscoe and Rainey. NO: Kearney and Coffey. ABSTAIN: None. ABSENT None.

**Authorizing a Mediated Settlement Agreement with Breedlove Electric, Inc., J. L. Williams Construction Co., Inc., and the City of Henderson and FY11 Budget Amendment #44.**  
*(Reference CAF 11-84; Resolution 11-58; Ordinance 11-38)*

City Manager Griffin asked City Attorney John Zollicoffer, Jr. to advise Council regarding this settlement.

Attorney Zollicoffer stated the City contracted with J. L. Williams (Williams) Construction for renovations of the old library building into the new City Hall. Williams subcontracted with Breedlove Electric (Breedlove). Breedlove sued Williams over compensation for work completed over and above the original "signed-off on" plans. Pleadings were filed and ultimately the case was brought to mediation.

Council Member Coffey asked for clarification on the pay-out amount. Attorney Zollicoffer stated the City's mediated portion to Breedlove was \$9,000. Council Member Rainey asked if the changes were known by Williams Construction. Council Member Coffey asked about change orders and Council Member Inscoe asked if the architect agreed that the changes were made after the fact. Attorney Zollicoffer stated the architect did not agree the changes were made after the fact – thus the mediation.

Council Member Coffey asked about court proceedings. Attorney Zollicoffer stated in his opinion, going to court would not be a good option. Mr. Zollicoffer also stated the statutes of limitations on the payment bond expired before the City became a party in this suit.

City Manager Griffin advised an Ordinance was necessary to balance funding to pay out the \$9,000 and stated the City Attorney had been very diligent through the winter attempting to reach an agreement which was ultimately unsuccessful.

Council Member Coffey asked how this would be filed with the courts and Attorney Zollicoffer stated as a dismissal. Council Member Daeke asked what the mediation cost the City. City Manager Griffin stated the cost was split three ways with the City cost being \$335.

With no further discussion, Mayor O'Geary asked for Council's pleasure.

Council Member Coffey moved the approval of Resolution 11—58, *Authorizing a Mediated Settlement Agreement with Breedlove Electric, Inc., J. L. Williams Construction Co., Inc., and the City of Henderson* and Ordinance 11-38, *FY11 Budget Amendment #44*. Motion seconded by Council Member Kearney and APPROVED by the following vote: YES: Daeke, Davis, Daye, Kearney, Coffey, Inscoe, Rainey and Peace-Jenkins. NO: None. ABSTAIN: None. ABSENT: None. (See Resolution Book 2, p. 117)

**Approving Property Owners Contract, Deeds of Trust and Promissory Notes, Between the City of Henderson, Rehab Development, Inc., and Property Owners Relative to the Hope VI Main Street Grant Program.**(Reference: CAF 11—87; Resolution 11-62; Ordinance 11-40)

Planning Director Erris Dunston addressed Council stating this grant was accepted two years ago and the second phase is now ready to begin construction. The project involves nine (9) apartments at 133 and 206 S. Garnett Street.

Council Member Daeke asked how many apartments from the first phase are currently rented. Ms. Dunston responded all but one. Ms. Dunston was asked about rent proceeds and she responded rent is between the renter and the owner. According to the Grant, the City is responsible for working with the contractor and property owner(s) to complete the work. Initially rent is capped at 60% or 80%, depending on criteria. After the initial renter moves out, property owners are allowed to lease at current values.

City Attorney Zollicoffer, Jr. responded to the questions about Notes and Deeds of Trust by stating this is *over protection* in case of default.

Council Member Coffey asked about utilities and parking. Planning Director Dunston responded there is off-street parking. Utilities are not included in the grant amount and must be paid as agreed between renter and landlord. Council Member Daeke asked if a lease was required. Ms. Dunston stated yes with whatever terms agreed to by the two parties. Council Member Coffey inquired as to the benefit of such a program. Ms. Dunston replied revitalization to downtown, and increasing the tax base.

City Manager Griffin advised Council that the attached Ordinance reflects a reduction from the existing \$12,000 grant match to \$6000 as only half the originally requested apartments will be constructed. Council Member Daeke asked about the layout and Ms. Dunston responded one building will have 6 apartments and the second building will have 3 apartments – none of which will be on the ground floor.

Council Member Rainey moved the approval of Resolution 11—62, *Approving Property Owners Contract, Deeds of Trust and Promissory Notes, Between the City of Henderson, Rehab Development, Inc., and Property Owners Relative to the Hope VI Main Street Grant Program*, and Ordinance 11-40, *FY 11 Budget Amendment #45*. Motion seconded by Council Member Inscoe and APPROVED by the following vote: YES: Davis, Daye, Kearney, Coffey, Inscoe, Rainey, Peace-Jenkins and Daeke. NO: None. ABSTAIN: None. ABSENT: None. (See *Resolution Book 2, p. 125*)

**FY 12 Budget Amendment #1 Appropriating \$150,000 to the CIP Regional Water-Interbasin Transfer Project as Budgeted and Approved by City Council During the FY 11-12 Budget Process.** (Reference: *CAF 11-86; Ordinance 11-39*)

City Manager Griffin stated this first amendment to the new budget allows for the transfer of funds into the CIP Regional Water Interbasin Transfer Project.

There was no discussion. Mayor O’Geary asked for the pleasure of Council.

Council Member Inscoe moved the approval of Ordinance 11—39, *FY 12 Budget Amendment #1 Appropriating \$150,000 to the CIP Regional Water-Interbasin Transfer Project as Budgeted and Approved by City Council During the FY 11-12 Budget Process*. Motion seconded by Council Member Rainey and Approved by the following vote: YES: Daye, Kearney, Coffey, Inscoe, Rainey, Peace-Jenkins, Daeke and Davis. NO: None. ABSTAIN: None. ABSENT: None. (See *Ordinance Book 8, p. 281*)

**PUBLIC COMMENT PERIOD ON NON-AGENDA ITEMS**

City Clerk McCrackin advised one citizen wished to address Council.

**Mr. Ellis Weathers, 1306 Roanoke Avenue.** Mr. Weathers concern regarded the lack of trash pick-up. Mr. Weathers stated his calls to the Operations Center resulted in brief periods of trash pick-up, but would soon drop back to nothing. Mr. Weathers brought with him a section of wooden post from his trash, on which he had recorded the dates there was no pick-up and requested a refund for the month of May as there was no trash pick-up during that month at his residence. Mayor O'Geary stated he was sorry to hear about this problem and asked the City Manager to work with Mr. Weathers to resolve this issue.

## REPORTS

**a) Mayor/Mayor Pro-Tem (No Report)**

**b) City Manager – City Manager Ray Griffin brought four (4) issues to Council's attention:**

1. Mr. Griffin asked Code Compliance Director Corey Williams to address Council with *good news*. Mr. Williams stated work began this week on Beacon Light with grass cutting and erosion control measures. Mr. Williams expects demolition to begin next week. Mayor O'Geary asked to be notified when demolition starts. Council thanked Mr. Williams for all his work on this project.

Council Member Kearney thanked Mr. Williams for his prompt response to a citizen's request.

2. Mr. Griffin stated he had received official correspondence from the City of Oxford requesting authorization to purchase 600,000 gallons of water a day to resell to the City of Creedmoor. Mr. Griffin asked for Council's permission to meet with the City of Oxford, with Council representative Michael Inscoe, City Attorney John Zollicoffer, Jr. and Assistant City Manager Frank Frazier. Council concurred.

3. Mr. Griffin revealed that the Economic Development Prospect A of Resolution 10-28 was Paint Reclamation International, LLC, owned by Ms. P. D. Williams. Mr. Griffin requested the City Clerk to make the appropriate notations on this Resolution.

4. Mr. Griffin then thanked Council for their hard work on the FY12 Budget. He thanked Council for their hard work in grappling with a no-win budget and their efforts to do the right things for the community. He also thanked staff for their hard work and commitment.

**c) City Attorney (No Report)**

**d) City Clerk – City Clerk Esther McCrackin advised Council that going forward any proclamation/resolution not presented during a Council meeting will be copied in the Reports section for informational purposes.**

Mayor O'Geary then asked if Council was prepared to go into Closed Session and advised those present that there was nothing to report at this time after the closed session.

### **CLOSED SESSION**

Council Member Coffey moved for Council to convene in closed session pursuant to G.S. §143-318.11(a)(5), consulting with City Attorney regarding a real estate matter. Motion seconded by Council Member Inscoe and unanimously approved. (*Council convened in closed session at 8:00 p.m.*)

Council Member Inscoe moved for Council to convene in open session. Motion seconded by Council Member Rainey and unanimously approved. Council re-convened in open session at 8:17 p.m.

### **ADJOURNMENT**

Council Member Inscoe moved for adjournment. Motion seconded by Council Member Daeke and unanimously approved. The meeting adjourned at 8:18 p.m.

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James D. O'Geary  
Mayor

***ATTEST:***

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Esther J. McCrackin  
City Clerk